

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Defendant.

INTRODUCTION

3. Defendant owns and operates a website known as bellyupsports.com (the “*Website*”).

1 4. Defendant, without permission or authorization from Plaintiff actively copied,
2 stored, and/or displayed Plaintiff's Photograph on the Website and engaged in this misconduct
3 knowingly and in violation of the United States copyright laws.

4 **PARTIES**

5 5. Plaintiff Paul Bereswill is an individual who is a citizen of the State of New York
6 and maintains a principal place of residence at 622 South Main Street, Freeport in Nassau County,
7 New York.

8 6. Upon information and belief, Defendant Belly Up Sports LLC, is a Ohio limited
9 liability company with a principal place of business at 6931 Road 21, Continental in Putnam
10 County, Ohio and is liable and responsible to Plaintiff based on the facts herein alleged.

11 **JURISDICTION AND VENUE**

12 7. This Court has subject matter jurisdiction over the federal copyright infringement
13 claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

14 8. This Court has personal jurisdiction over Belly Up Sports LLC because it maintains
15 its principal place of business in Ohio.

16 9. Venue is proper under 28 U.S.C. §1391(a)(2) because Belly Up Sports LLC does
17 business in this Judicial District and/or because a substantial part of the events or omissions giving
18 rise to the claim occurred in this Judicial District.

19 **FACTS COMMON TO ALL CLAIMS**

20 10. Plaintiff is a professional photographer by trade who is the legal and rightful owner
21 of the photographs which Plaintiff licenses to online and print publications.

22 11. Plaintiff has invested significant time and money in building Plaintiff's photograph
23 portfolio.

24 12. Plaintiff has obtained active and valid copyright registrations from the United States
25 Copyright Office (the "USCO") which cover many of Plaintiff's photographs while many others
26

1 are the subject of pending copyright applications.

2 13. Plaintiff's photographs are original, creative works in which Plaintiff owns
3 protectable copyright interests.

4 14. Upon information and belief, Belly Up Sports LLC is the registered owner of the
5 Website and is responsible for its content.

6 15. Upon information and belief, Belly Up Sports LLC is the operator of the Website
7 and is responsible for its content.

8 16. The Website is a popular and lucrative commercial enterprise.

9 17. The Website is monetized in that it contains paid advertisements and, upon
10 information and belief, Defendant profits from these activities.

11 18. The Website is monetized in that it sells merchandise to the public and, upon
12 information and belief, Defendant profits from these activities.

13 19. On April 1, 2020, Plaintiff authored a photograph of professional basketball player
14 Caris Coleman LeVert while participating in a National Basketball Association (NBA) sanctioned
15 game (the "*Photograph*"). A copy of the Photograph is attached hereto as Exhibit 1.

16 20. Plaintiff applied to the USCO to register the Photograph on or about June 27, 2020
17 under Application No. 1-8968780050.

18 21. The Photograph was registered by the USCO on June 27, 2020 under Registration
19 No. VA 2-209-774.

20 22. On April 11, 2022, Plaintiff first observed the Photograph on the Website in a story
21 dated July 14, 2020. A copy of the screengrab of the Website including the Photograph is attached
22 hereto as Exhibit 2.

23 23. The Photograph was displayed at URL:
24 <https://bellyupsports.com/2020/07/brooklyn-nets-bubble-preview/>.

25 24. The Photograph was stored at URL: <https://bellyupsports.com/wp->

1 <content/uploads/2020/07/caris-levert.png>

2 25. Without permission or authorization from Plaintiff, Defendant volitionally selected,
3 copied, stored and/or displayed Plaintiff's copyright protected Photograph as is set forth in Exhibit
4 "1" on the Website.

5 26. Upon information and belief, the Photograph was copied, stored and displayed
6 without license or permission, thereby infringing on Plaintiff's copyrights (hereinafter the
7 "*Infringement*").

8 27. The Infringement includes a URL ("*Uniform Resource Locator*") for a fixed
9 tangible medium of expression that was sufficiently permanent or stable to permit it to be
10 communicated for a period of more than a transitory duration and therefore constitutes a specific
11 infringement. *17 U.S.C. §106(5); Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1160 (9th
12 Cir. 2007).

13 28. The Infringement is an exact copy of the vast majority and/or critical portions of
14 Plaintiff's original image that was directly copied and stored by Defendant on the Website.

15 29. Upon information and belief, Defendant takes an active and pervasive role in the
16 content posted on its Website, including, but not limited to copying, posting, selecting,
17 commenting on and/or displaying images including but not limited to Plaintiff's Photograph.

18 30. Upon information and belief, Defendant directly contributes to the content posted
19 on the Website by, inter alia, directly employing reporters, authors and editors as its agents,
20 including but not limited to Parker Ainsworth by which Defendant's Website list him as a "Senior
21 NBA Writer" ("*Employees*").

22 31. Upon information and belief, at all material times the Employees were acting within
23 the course and scope of their employment when they posted the Infringement.

24 32. Upon information and belief, at all material times the Employees were acting within
25 the course and scope of their agency when they posted the Infringement.
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27
28

1 33. Upon information and belief, the Photograph was willfully and volitionally posted
2 to the Website by Defendant.

3 34. Upon information and belief, Defendant is not registered with the United States
4 Copyright Office pursuant to 17 U.S.C. §512.

5 35. Upon information and belief, the Infringement was not posted at the direction of a
6 “user” as that term is defined in 17 U.S.C. §512(c).

7 36. Upon information and belief, Defendant engaged in the Infringement knowingly
8 and in violation of applicable United States Copyright Laws.

9 37. Upon information and belief, Defendant has the legal right and ability to control
10 and limit the infringing activities on its Website and exercised and/or had the right and ability to
11 exercise such right.

12 38. Upon information and belief, Defendant monitors the content on its Website.

13 39. Upon information and belief, Defendant has received a financial benefit directly
14 attributable to the Infringement.

15 40. Upon information and belief, the Infringement increased traffic to the Website and,
16 in turn, caused Defendant to realize an increase in its advertising revenues and/or merchandise
17 sales.

18 41. Upon information and belief, a large number of people have viewed the unlawful
19 copies of the Photograph on the Website.

20 42. Upon information and belief, Defendant at all times had the ability to stop the
21 reproduction and display of Plaintiff's copyrighted material.

22 43. Defendant's use of the Photograph, if widespread, would harm Plaintiff's potential
23 market for the Photograph.

24 44. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

25 **FIRST COUNT**

(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)

45. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though set forth in full herein.

46. The Photograph is an original, creative work in which Plaintiff owns valid copyright properly registered with the United States Copyright Office.

47. Plaintiff has not licensed Defendant the right to use the Photograph in any manner, nor has Plaintiff assigned any of its exclusive rights in the copyrights to Defendant.

48. Without permission or authorization from Plaintiff and in willful violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, stored, reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its copyrights.

49. Defendant's reproduction of the Photograph and display of the Photograph constitutes willful copyright infringement. *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340, 361 (1991).

50. Plaintiff is informed and believes and thereon alleges that the Defendant willfully infringed upon Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code, in that they used, published, communicated, posted, publicized, and otherwise held out to the public for commercial benefit, the original and unique Photograph of the Plaintiff without Plaintiff's consent or authority, by using it in the infringing article on the Website.

51. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for the infringement pursuant to 17 U.S.C. § 504(c).

52. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in

1 its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs
2 pursuant to 17 U.S.C. § 505 from Defendant.

3 53. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled
4 to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

5 **SECOND COUNT**

6 ***(Falsification, Removal and Alteration of Copyright Management***
7 ***Information 17 U.S.C. § 1202)***

8 54. Plaintiff repeats and incorporates, as though fully set forth herein, each and every
9 allegation contained in the preceding paragraphs, as though set forth in full herein.

10 55. Upon information and belief, Defendant knew that Plaintiff created and held rights
11 to the Photograph because, *inter alia*, the source of the Photograph that Defendant used to make
12 its infringing copy specifically attributed the Photograph to Plaintiff by watermark or photo credit.

13 56. Upon information and belief, in its article on the Website, Defendant copied the
14 Photograph from [https://nypost.com/2020/04/01/caris-levert-is-at-forefront-of-nets-search-for-](https://nypost.com/2020/04/01/caris-levert-is-at-forefront-of-nets-search-for-another-star/)
15 [another-star/](https://nypost.com/2020/04/01/caris-levert-is-at-forefront-of-nets-search-for-another-star/) (the “*Original Source*”) which contained a photograph credit located directly beneath
16 the Photograph stating “Paul J. Bereswill,” the owner and author of the Photograph.

17 57. A copy of a screenshot of the Original Source page is attached hereto as Exhibit 3.

18 58. The photograph credit is copyright management information.

19 59. Upon information and belief, Defendant intentionally removed copyright
20 management information related to the Photograph with the intent to induce, enable, facilitate, or
21 conceal an infringement of Plaintiff's rights under the Copyright Act. Specifically, Defendant
22 purposefully failed to include the photo credit originally conveyed with the Photograph in order to
23 mislead the public into believing that Defendant either owned the Photograph or had legitimately
24 licensed it for use in the Infringement. Upon information and belief, in addition to removing the
25 photo credit, Defendant also removed the metadata from the Photograph.

26 60. In addition, Defendant displayed the unauthorized copies of the Photograph

1 knowing the copyright management information had been removed.

2 61. Defendant' conduct violates 17 U.S.C. § 1202(a) and 1202(b).

3 62. Upon information and belief, Defendant's falsification, removal and/or alteration of
4 the aforementioned copyright management information was made without the knowledge or
5 consent of Plaintiff.

6 63. Upon information and belief, the falsification, alteration and/or removal of said
7 copyright management information was made by Defendant intentionally, knowingly and with the
8 intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the
9 Photograph. Defendant also knew, or should have known, that such falsification, alteration and/or
10 removal of said copyright management information would induce, enable, facilitate, or conceal
11 their infringement of Plaintiff's copyright in the Photograph.

12 64. Plaintiff has sustained significant injury and monetary damages as a result of
13 Defendant' wrongful acts as hereinabove alleged, and as a result of being involuntarily associated
14 with Defendant in an amount to be proven.

15 65. As a result of Defendant's violations of Title 17 of the U.S. Code, pursuant to 17
16 U.S.C. § 1203(c)(2), Plaintiff is entitled to an award of the actual damages suffered as a result of
17 the violation including any profits of the Defendant attributable to the violation or, alternatively,
18 Plaintiff may elect to recover from Defendant statutory damages pursuant to 17 U.S.C. §
19 1203(c)(3) for each violation of 17 U.S.C. § 1202.

20 66. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in
21 its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs
22 pursuant to 17 U.S.C. § 1203(b)(4) and (5) from Defendant.

23 **JURY DEMAND**

24 67. Plaintiff hereby demands a trial of this action by jury.

25 **PRAYER FOR RELIEF**

1 **WHEREFORE** Plaintiff respectfully requests judgment as follows:

2 That the Court enters a judgment finding that Defendant has infringed on Plaintiff's rights
3 to the Photograph in violation of 17 U.S.C. §501 et seq. and award damages and monetary relief
4 as follows:

- 5 a. finding that Defendant infringed upon Plaintiff's copyright interest in the
6 Photograph by copying and displaying without a license or consent;
- 7 b. for an award of actual damages and disgorgement of all of Defendant's
8 profits attributable to the infringement as provided by 17 U.S.C. § 504 in an
9 amount to be proven or, in the alternative, at Plaintiff's election, an award
10 for statutory damages against Defendant for the infringement pursuant to 17
11 U.S.C. § 504(c), whichever is larger;
- 12 c. for an award of actual damages or, in the alternative, statutory damages
13 against Defendant for each falsification or removal of copyright
14 management information pursuant to 17 U.S.C. § 1202;
- 15 d. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any
16 infringing use of any of Plaintiff's works;
- 17 e. for costs of litigation and reasonable attorney's fees against Defendant
18 pursuant to 17 U.S.C. § 505 and/or 17 U.S.C. §1203(b)(4) and (5);
- 19 f. for pre judgment interest as permitted by law; and
- 20 g. for any other relief the Court deems just and proper.

21 DATED: January 27, 2023

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